STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Ernest Ray & Joan Miller Dist. 9, Map 24D, Group A, Parcel 21.00 Residential Property Tax Year 2006	))))	Bedford County

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$15,000	$89,100	$104,100	$26,025

An Appeal has been filed on behalf of the property owner with the State Board of Equalization on February 16, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on January 18, 2007, at the Bedford County Property Assessor's Office. Present at the hearing were Ernest Ray Miller, the taxpayer who represented himself and Rhonda Clanton, the Assessor for Bedford County, Mark Lamb an Appraiser, from the Property Assessor's Office, Bobby Spencer and Tom Winfrey from the Division of Property Assessment for the State of Tennessee.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property consists of a single family residence located at 105 Cayenne Drive in Bedford County, Tennessee.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. T.C.A.§§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b)(2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

> The taxpayer shall have a right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such **reasonable cause**, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made *(emphasis added).*

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer's control**. *(Emphasis added), Associated Pipeline Contractors Inc., (Williamson* County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets, (*Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Bedford County Board of Equalization in a timely fashion. It is the taxpayer's burden to prove that they are entitled to the requested relief.

In this case, the taxpayer, Mr. Miller, did not appeal to the Bedford County Board of Equalization prior to filing the appeal form to the State Board of Equalization. Mr. Miller had filed his appeal form for tax years 2005 and 2006 on the same form[1]. The 2005 tax issues were resolved by an agreement when the 2004 tax issues were addressed. When Mr. Miller discovered that he was "too early" on the 2006 he states that he called Mr. Kelsie Jones, Executive Secretary for the State Board of Equalization and explained the situation to him. He states that Mr. Jones told him to go to the County Board when it was convened and to send in the County Board notice when he received it. So while the steps were wrong they were complete.

The Administrative Judge finds that reasonable cause does exist justifying the failure of the taxpayer to comply with the Tennessee Code Annotated § 67-5-1412(e), the taxpayer's reliance on the information from the Executive Secretary will be considered reasonable cause.

Now as to the issue of value: Tennessee Code Annotated § 67-5-601(a) provides (in relevant part) that "[t]he value of all property shall be ascertained from the evidence of its **sound, intrinsic and immediate value**, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values...."

The taxpayer believes that the subject property is worth $85,000 based on his belief that the price of the pole barn has increased the value of the subject. Mr. Miller states that "the average taxes of nearby homes is $84,080", he goes on to say, "My home is in the middle of these $104,100 homes and it is not right [sic] and live only paid $73,000 for the house and barn. I can't see why my taxes are $31,000 more then I gave." Taxpayers'

[1] Ordinarily each tax year must have a separate application.

collective exhibit number 3 shows that he has reviewed various properties in his area as well as the cost of the outbuilding/garage/barn. Mr. Miller has also stated the he just wants to be treated fairly, that he and his wife have been retired for five (5) years and "taxes can't go from 400 to 600 in 3 years and us keep up."

Since the taxpayer is appealing from the determination of the Bedford County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board,* 620 S.W. 2d 515 (Tenn. App. 1981)

Mr. Miller also relies on the Initial Decision and Order from Judge Mark Minsky from his 2004 appeal as proof that the values are incorrect, however, each tax year stands alone and to justify relief the taxpayer must show by a preponderance of the evidence that an allegation is true or that the issue should be resolved in favor of that party. *Uniform Rules of Procedure for Hearing Contested Cases. Rule 1360-4-1-.02 (7).*

The assessor contends that the property should be valued at $102,600.[2] In support of this position; three comparable sales were introduced and marked as collective exhibit #1 as part of the record in this cause. Mr. Spencer, on behalf of the county, used the Sales Comparison approach to establishing the value of the subject property. The paired data analysis shows that the value is supported by relevant sales in the area.[3]

The germane issue is the value of the property as of January 1, 2006. As previously noted, the basis of valuation as stated in T.C.A.§ 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . . ."

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at $102,600 based upon the presentation of evidence by the Division of Assessments for the State of Tennessee.

Generally, there are three approaches to determining the value of property. Some methods are more appropriate than others when dealing with specific types of property. For residential property it is well recognized that the Sales Comparison Approach is the most appropriate when comparable sales data is available as it presented was in this case.

The administrative judge finds that rather than averaging comparable sales, as the taxpayer attempted to do here, **comparables must be adjusted.** As explained by the Assessment Appeals Commission in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) as follows:

---

[2] This is a slight reduction in the value set at the Bedford County Board of Equalization.
[3] The comparables are geographically very close to the subject.

> The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is **presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value**. . . . (emphasis supplied) Final Decision and Order at 2.

In analyzing the arguments of the taxpayer, the administrative judge must look to the applicable and acceptable standards in the industry when "comparing" the sales of similar properties as the taxpayer did here; paired data analysis is the more appropriate approach. Mr. Miller's production of copies of outbuildings advertisement without a paired analysis does not assist the administrative judge in determining the value nor does the 2003 sales contract or the insurance information. The inclusion of the last page of a document which purports to be an appraisal from 2003 is also not helpful, it should be noted that 2006 was a re-appraisal year for Bedford County.

The Assessment Appeals Commission has also noted in Payton *and Melissa Goldsmith*, Shelby County, Tax year 2001, in quoting the Tennessee Supreme Court in the case of Carroll v. Alsup, 107 Tenn. 257, 64 S.W.193 (1901):

> It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, **on the ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own.** When he comes into court asking relief of his own assessment, he must be able to allege and show that his property is assessed at more than its actual cash value. He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and **ask to have it raised to his own,** . . . (emphasis supplied)

As to the taxpayers request to be treated fairly he is basically requesting relief on equitable grounds. In a recent decision on a similar argument that the State Board could redress a taxpayer's grievance on "equitable" grounds, Administrative Judge Pete Loesch, stated in *Theoda Dunn,* Henderson County, Tax Years 1999, 2000, 2001, 2002, 2003, and 2004:

. . . As an administrative agency, the State Board's powers are limited to those delegated by the legislature. Thus, for example, in Trustees of Church of Christ (Obion County, Final Decision and Order, February 9, 1993), the Assessment Appeals Commission declined to backdate a church's claim of property tax exemption under T.C.A. § 67-5-212 on the following rationale:

> There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the

> statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however. *Id.* at p. 2. *See also* Tenn. Atty. Gen. Op. 92-62 (October 8, 1992).

With respect to the issue of market value, the administrative judge finds that Mr. Miller simply introduced insufficient evidence to affirmatively establish the market value of subject property as of January 1, 2006, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$15,000	$87,600	$102,600	$25,650

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27th day of February, 2007.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Ernest Ray & Jean Miller
Ronda H. Clanton, Assessor of Property